

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

VALERIE MESCIA-DONNELLY

Plaintiff,

v.

JAMES D. CAMP, JR., JAMES D. CAMP,
III, LAWRENCE SAUL BLUMBERG,
NICHOLAS A. MESCIA, III,

Defendants.

Case No. 2:22-cv-00178-RFB-EJY

ORDER

and

REPORT AND RECOMMENDATION

RE: ECF No. 1-2

Pending before the Court is Plaintiff Mescia-Donnelly's application to proceed *in forma pauperis* and Complaint. ECF Nos. 1, 1-2.

I. In Forma Pauperis Application

Plaintiff submitted the declaration and information required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. ECF No. 1. Therefore, Plaintiff's *in forma pauperis* application is granted.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). When screening a complaint, the Court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court liberally construes pro se complaints and may only dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which

1 would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,
2 556 U.S. at 678).

3 When considering whether a complaint is sufficient to state a claim, all allegations of material
4 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P’ship*
5 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the
6 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide
7 more than mere labels and conclusions. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A
8 formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear the
9 complaint’s deficiencies could not be cured through amendment, a *pro se* plaintiff should be given
10 leave to amend the complaint with notice regarding the complaint’s deficiencies. *Cato v. United*
11 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

12 **III. DISCUSSION**

13 In her Complaint, Plaintiff states she is a citizen of South Carolina and that the Defendants
14 are citizens of Florida, New York, and Massachusetts. ECF No. 1-2 at 1-2. While on its face this
15 establishes diversity of citizenship of the parties under 28 U.S.C. § 1332, Plaintiff fails to
16 demonstrate personal jurisdiction over any party to this suit. Personal jurisdiction is established
17 when: “(1) provided for by law; and (2) the exercise of jurisdiction comports with due process.”
18 *Southport Lane Equity II, LLC v. Downey*, 177 F. Supp. 3d 1286, 1290 (D. Nev. 2016) *citing*
19 *Greenspun v. Del E. Webb Corp.*, 634 F.2d 1204, 1207 (9th Cir. 1980). “When no federal statute
20 governs personal jurisdiction, a federal court applies the law of the forum state.” *Id. citing Boschetto*
21 *v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). Where a state, such as Nevada, has a “long-arm”
22 statute providing state “courts jurisdiction to the fullest extent permitted by the Due Process Clause
23 of the Fourteenth Amendment, a court need only address federal due process standards.” *Id. citing*
24 *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 509, 134 P.3d 710, 712 (2006) (citing
25 Nev. Rev. Stat. § 14.065); *Boschetto*, 539 F.3d at 1015.

26 Under these standards, a defendant must generally have “certain minimum contacts” with the
27 forum state before personal jurisdiction will be established. *Int’l Shoe Co. v. Washington*, 326 U.S.
28 310, 316 (1945). Personal jurisdiction may be established in one of two ways—“general jurisdiction

1 and specific jurisdiction.” *Boschetto*, 539 F.3d at 1016; *see also Helicopteros Nacionales de*
 2 *Colombia, S.A. v. Hall*, 466 U.S. 408, 413–414 (1984). General jurisdiction is properly exercised
 3 only when “a defendant’s contacts with a forum are so substantial, continuous, and systematic that
 4 the defendant can be deemed to be ‘present’ in that forum for all purposes.” *Menken v. Emm*, 503
 5 F.3d 1050, 1056–57 (9th Cir. 2007). Here, Plaintiff pleads no facts in support of the conclusion that
 6 Defendants’ contacts with Nevada are sufficient to establish general jurisdiction. ECF No. 1-2. In
 7 fact, Plaintiff fails to assert any claims at all regarding Defendants’ relationship with the State of
 8 Nevada. *Id.*

9 A review of specific jurisdiction also does not save Plaintiff’s Complaint. Specific
 10 jurisdiction is “jurisdiction based on the relationship between the defendant’s forum contacts and
 11 plaintiff’s claims.” *Menken*, 503 F.3d at 1057. “[T]he defendant’s conduct and connection with the
 12 forum State [must be] such that he should reasonably anticipate being haled into court there.”
 13 *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). “[M]ere injury to a forum
 14 resident is not a sufficient connection to the forum.” *Walden v. Fiore*, 571 U.S. 277, 290 (2014).
 15 Again, Plaintiff alleges no facts establishing specific jurisdiction over Defendants.

16 **IV. Order**

17 IT IS HEREBY ORDERED that Plaintiff’s Motion for Leave to Proceed *in forma pauperis*
 18 (ECF No. 1) is GRANTED.

19 **V. RECOMMENDATION**

20 IT IS HEREBY RECOMMENDED that Plaintiff’s Complaint (ECF No. 1-2) be
 21 DISMISSED without prejudice so that Plaintiff may bring her claim in a court that has jurisdiction
 22 over the parties.

23 Dated this 1st day of February, 2022.

24
 25 
 26 ELAYNA J. YOUCHAK
 27 UNITED STATES MAGISTRATE JUDGE
 28

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).